

HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.27986 of 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking a writ of Mandamus declaring the action of the respondents in making attempts to evict the petitioner from the land in question as illegal and arbitrary.

2. Heard the learned counsel for the petitioner, the learned Government Pleader for Forests representing the respondents 1 to 4 (Telangana) and the learned Government Pleader for Revenue representing the respondents 5 and 6 (Telangana).

3. The case of the petitioner is that he is the owner of an extent of Ac.5.01 cents in Survey No.843/1 and 843/2 of Aswaraopeta village and Mandal in Khammam District. It is the further case of the petitioner that the revenue officials have issued pattadar passbook and title deed in his favour in respect of the land in question. A perusal of the record, *prima facie*, reveals that the petitioner has been in possession and enjoyment of the land in question.

4. The contention of the learned Government Pleader for Forests is that under the guise of the pattadar pass book, the petitioner herein encroached the forest land without any right whatsoever.

5. Whether the petitioner has in possession and enjoyment of the forest land or not is purely a question of fact, which cannot be decided while exercising the jurisdiction under Article 226 of the Constitution. Even assuming, but not conceding, that the land in

question belongs to the Forest Department, it has to follow the due procedure and evict the petitioner. It is a settled principle of law that a person, who is in possession of the land, though an encroacher, cannot be dispossessed except by due process of law (see **East India Hotels Ltd v Syndicate Bank**^[1], **Meghmala v G.Narasimha Reddy**^[2] and **Maria Margarida Sequeria Fernandes v Erasmo Jack De Sequeria (Dead) through L.Rs**^[3]).

6. Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, the second respondent is hereby directed not to evict the petitioner from the land in an extent of Acs.5.01 guntas in Survey No.843/1 and 843/2 of Aswaraopeta village and Mandal in Khammam District, without following due procedure.

7. Accordingly, this writ petition is disposed of. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

T.SUNIL CHOWDARY, J

August 22, 2016.

Rns

^[1] 1992 Supp (2) SCC 29

^[2] 2011 (2) ALT 8 (SC)

^[3] AIR 2012 SC 1727